

REMARKS

This file has been transferred to the firm of undersigned for further prosecution on behalf of the applicants. It is requested that further correspondence be had with the new attorneys as indicated below and that the PTO adopt the new attorney's docket reference: **ANDERSCH=1**.

The Official Action of June 16, 2008, and the prior art relied upon therein have been carefully reviewed. The claims in the application are now claims 1-6 and 8-12, and these claims are respectfully submitted to define novel and unobvious subject matter warranting their allowance. Accordingly, applicants respectfully request favorable reconsideration and allowance.

The Office Action summary indicates that a certified copy of the priority application has not been received. However, the present application is the U.S. National Phase of PCT/EP04/04167, and the International Bureau of WIPO would have forwarded a copy of the priority application to the PTO. Applicants further note in this respect that the foreign priority application was submitted to the PTO on November 2, 2005, according to the file of the present application available on line at the U.S. PTO's PAIR. Accordingly,

acknowledgement by the PTO of the receipt of applicants' papers filed under Section 119 would be appreciated.

With regard to the claim objections, appropriate corrections have been made. Applicants thank the examiner for noting the typographical errors in question.

New claim 12 has been added based on the examples in the specification commencing at page 33, directed to those compositions in which highly surprising synergistic results have already been demonstrated in applicants' specification. The results are clearly non-obvious.

Claim 1 has been amended, and therefore all the claims have been amended through their dependence on claim 1, to more explicitly specify that the compounds of Group (b) to be combined with the (a) compound is one or more "which synergistically enhances said one or more active pesticide compounds of Group I." This added recitation makes explicit that which was already at least implicit, namely that the claims do not cover any compositions which are not synergistic.

Claims 1-6 and 8-11 have been rejected as obvious from Watanabe et al WO01/02378 (Watanabe) in view of Cullen et al USP 4,748,186 (Cullen) and Assmann et al USP 6,277,791 (Assmann). This rejection is respectfully traversed.

First, applicants' disclosure must be contrasted with that of Watanabe. While it is true that applicants' disclosure is broad in the sense that the pesticide compounds (b) are many, applicants' specification is much more limited than the disclosure of Watanabe, and applicants' disclosure shows the actual existence of unobvious synergism. In contrast, the disclosure of Watanabe is much broader (e.g. see pages 9-15), and contains no evidence of any synergistic mixtures. The present invention thus can be considered to be essentially a **selection** invention from the almost infinite number of possibilities disclosed by Watanabe.

Indeed, any skilled technician in the field recognizes that Watanabe lists almost all known pesticides. However, Watanabe neither specifically discloses any particular combination of the present invention, nor demonstrates or provides experimental evidence for synergistic effects in enhancing pesticidal activity of the claimed combinations. In fact, the specific combinations claimed in the present invention were not completed in the cited prior-art publications, and they were selected for the first time by the present inventors. The synergistic effect on enhancing insecticidal activity of the presently claimed combination, which is demonstrated by the experimental data in the present application, has not been mentioned in the cited prior art.

As regards Cullen, which discloses certain different trifluorobutenyl derivatives and their pesticidal applications, and Assmann, which discloses synergistic mixtures different from the presently claimed ones, even when considered or combined with Watanabe, cannot reach the present invention, or have made the present invention obvious. Both Cullen and Assmann are silent about the presently claimed combinations, and Watanabe, as noted above, does not point to synergy of any particular combination of the present invention. Thus, because the synergy achieved cannot have been obvious, it is maintained that Claims 1-6 and 8-11 define non-obvious subject matter over the cited prior art.

Applicants have pointed out above that the present specification contains examples which actually demonstrate surprising synergistic effects. It is of course well accepted that actual examples in an applicant's specification have the same effect as evidence presented by affidavit or declaration.

Please note that the pesticides inside each group (b1) to (b7) are carefully selected and exemplified with one or more experiments clearly showing the synergistic effect as a result of addition of any one of the compounds (b1) to (b7) to the compound (a).

Applicants did not overburden the list of compounds intentionally, and selected only those few of them which are

known to possess very similar biological activity inside each group. For instance, there are eight neonicotinoids in group (b2), which are experimentally represented by two of them, namely imidacloprid and clothianidin. Another six neonicotinoids listed in group (b2) have the same biological activity, and thus can be included in this group.

Applicants' respectfully submit that there is no way that a person of ordinary skill in the art, viewing Watanabe, Cullen and Assmann together, could have reasonably expected to achieve the results which are demonstrated in applicants' specification. Applicants' claims define non-obvious subject matter, and the rejection should be withdrawn. Such is respectfully request.

The examiner has helpfully suggested that applicants should utilize classic Markush language for the (b) compounds of claim 1. The examiner has properly imposed no requirement in this regard. Applicants believe because Group (b) compounds fall within seven groups, the use of classical Markush language would be awkward and possibly confusing. As alternative language of the type utilized in claim 1 is permissible, applicants prefer to retain such language rather than using more awkward Markush language. However, Markush language is used in new claim 12.


The prior art documents of record and not relied upon by the PTO have been noted, along with the implication that such documents are deemed by the PTO to be insufficiently material to warrant their application against any of applicants' claims.

Applicants believe that all issues raised in the Official Action have been addressed above in a manner that should lead to patentability of the present application. Favorable consideration and early formal allowance are respectfully requested.

Respectfully submitted,

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